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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

GORDON DOUGLAS TUTTON,

Defendant and Appellant.

F072700

(Super. Ct. Nos. SC039113A,
BF115825A, SF013842A)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Kern County. Michael B. Lewis,
Judge.

Karriem J. Baker, under appointment by the Court of Appeal, for Defendant and
Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and
Respondent.

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* Before Kane, Acting P.J., Poochigian, J. and Smith, J.

Appellant Gordon Douglas Tutton appeals from the denial of his petitions for reduction of sentences pursuant to Proposition 47 (Penal Code section 1170.18). Appointed counsel filed an opening brief asking this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Following independent review of the record, we affirm.

In September 2015, appellant petitioned to have his July 28, 1989 conviction for violation of section “460.2,” (presumably referring to then existing Pen. Code, § 460, subd. (2)), his April 13, 2007 conviction for violation of Health and Safety Code section 11350, and his April 24, 2007 conviction for violation of Health and Safety Code section 11377, reduced to misdemeanors.

In September 2015, the District Attorney responded to the petitions stating that appellant is not eligible for the requested relief because appellant had suffered a conviction for violation of Penal Code section 191.5, a disqualifying felony. (See Pen. Code, § 667, subd. (e)(2)(C)(iv).)

The Kern County Superior Court denied the petitions on the ground appellant was ineligible for resentencing based on his disqualifying prior.

On November 12, 2015, appellant filed notices of appeal.

Appellate counsel filed an opening brief that sets forth the facts of the case and requests that we review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Counsel and this court advised appellant of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. No brief has been filed.

Proposition 47, approved by California voters on November 4, 2014 (the act), reduced certain nonviolent drug and theft offenses from straight felonies or wobblers to misdemeanors. (*People v. Shabazz* (2015) 237 Cal.App.4th 303, 308.) Penal Code

section 1170.18 provides a mechanism for those sentenced to such nonviolent drug and theft offenses before the effective date of the act to petition for resentencing. Inmates given felony sentences for nonviolent drug and theft offenses, however, may be ineligible for resentencing if they have suffered certain specified prior offenses, referred to as “super strikes.” (See Pen. Code, §§ 1170.18, subd. (i), 667, subd. (e)(2)(C)(iv).) Among the disqualifying super strikes: “Any homicide offense, including any attempted homicide offense, defined in [Penal Code] sections 187 to 191.5, inclusive.” (Pen. Code, § 667, subd. (e)(2)(C)(iv)(IV).) Here, appellant has a prior conviction for vehicular manslaughter as defined in Penal Code section 191.5. Accordingly, the trial court did not err in denying appellant’s petition for resentencing.

Following an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.